REMARKS

Claims 2, 5, 8-9, 16-18 and 23 are pending in this application.

Above independent claims 1 and 14 and dependent claims 4, 6-7, 15 and 21-22 have been cancelled, without prejudice or disclaimer, for reducing issues in this application and making this application more focused for appeal, if an appeal should be necessary. Claims 5, 8 and 18 each have been rewritten in independent form. (Correspondingly, Claims 2, 9, 16, 17, 23 have been amended as to dependency.) The amendments are believed to be suitable for entry after-final as a matter of form in rewriting dependent claims in independent form. Claim scope is not being expanded. Entry and consideration are sought.

At page 2 of the Final Office Action, Claims 14-15 and 17 have been rejected under 35 U.S.C. 102(e) as being anticipated by Matsukawa.

Claims 14 and 15 having been canceled above, no response is believed to be needed with regard to the anticipation rejection of those claims. As to claim 17, its dependency has been changed to a base claim that has not been rejected as anticipated, and the anticipation rejection is believed to thereby have been obviated. Reconsideration and withdrawal of this anticipation rejection are respectfully requested.

At page 3 of the Final Office Action, Claims 1-2, 4, 6-7 and 9 have been rejected under 35 U.S.C. 102(e) as being unpatentable over Matsukawa.

Claims 1, 4, 6-7 having been canceled above, no response is believed to be needed with regard to the anticipation rejection of those claims. As to claims 2 and 9, their dependency has been changed to a base claim that has not been rejected as anticipated, and the anticipation rejection is believed to thereby have been obviated. Reconsideration and withdrawal of this anticipation rejection are respectfully requested.

At page 6 of the Final Office Action, Claims 5 and 18 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Matsukawa in view of Deitrickson.

Applicants respectfully traverse this obviousness rejection, for the several reasons as follows.

The Examiner at page 7 of the Final Office Action indicates that he is refusing to give any patentable weight to the recitation in Applicant's claims of a

"theater show". The Examiner incorrectly applies MPEP 2106. Contrary to the Examiner's assumption, for trying to perform the steps in Matsukawa, it does matter whether song recorded by a famous singer or a new musical theater show is at issue. The Examiner has failed to distinguish between a musical score that has been audio-recorded by a particular famous performer (which Matsukawa requires) and a musical score which has not yet been audio-recorded (and may not even have been written yet). In creation and development of a musical theater show, the "book" (i.e., the play) or the concept outline may be written before the musical scores get written. And, even when music gets created for a musical theater show, it is more likely to exist as a composer's handwritten materials until relatively close to the time for rehearsal. A musical theater show can come into existence even before any of its music gets written much less performed and recorded. Thus, the Examiner's treatment of a musical theater show as interchangeable with a musical audio recording provided by Matsukawa is not correct. Matsukawa cannot be extended to a situation where the music score has not yet been recorded. The inapplicability of Matsukawa is even more apparent where the music score has not been, or is not required yet to have been, written.

Applicant's claim 5 recites a method of promoting a new musical theater show. Neither the primary nor the secondary reference discloses promotion of any kind of musical theater shows, either new or established. Promoting a single famous recording artist differs substantially from promoting a musical theater show. And promoting a new musical theater show raises different challenges compared to promoting even the very same show once it becomes an award-winning established show. The Examiner's generalizing "a musical theater show" into a larger category of "musical pieces" is not in accordance with the actual music business, which itself separates artist promotion and show promotion. For example, see the attached pages showing that Columbia Artists operates one company (Columbia Artists Management LLC) for artists and a separate company (Columbia Artists Theatricals LLC) for theatrical shows. The two branches of Columbia Artists are even at separate street addresses.[1] And, two separate website addresses are used, www.cami.com concerning artists such as vocalists and

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[1]*See* Attachment A hereto, page A-1.

www.columbiaartiststheatricals.com concerning theatrical shows.[2] Thus, Matsukawa, concerning an individual artist and not a theatrical show, should not even be cited in the first instance against the presently claimed invention of claim 5, concerning a theatrical show and not an artist.

Applicant's claim 5 recites a "method of promoting a new musical theater show". By contrast, Matsukawa uses short music pieces by "currently famous artists and various performers such as so-called indies whose sponsor is a company" [0009] that can be packaged with an advertising message to benefit the sponsor company. Matsukawa teaches promoting a company along with distributing the music of a sponsored performer. Matsukawa relates to the symbiosis between well-heeled sponsor companies and the famous performers who can command sponsorship. However, a "new musical theater show" is a different situation. For example, a new musical play may be written for many years before being cast, and still bear promoting. The first performances of a new musical theater shows are, for most shows by most writers, unlikely to feature a famous, sponsored performer as Matsukawa completely relies upon. Without the famous performer, Matsukawa's system is useless and essentially unworkable. The fame of the performer is entirely what drives Matsukawa's system, and without the famous performer, there is nothing. Applicant's present invention is designed for such a context, where there is no one's fame to drive consumer behavior and another motivator must be used. Matsukawa completely fails to teach or suggest what to do in the absence of established fame and name on which to relay.

Moreover, the steps of Applicant's claim 5 are not disclosed or taught by Matsukawa. For instance, Applicant's claim 5 recites a step of, "for a to-be-promoted new musical theater show, establishing an Internet site relating to the show." Matsukawa does not disclose such a website. In Matsukawa [0071], a service center site provides "a list of musical pieces which can be distributed in combination with a [sic] advertising message as company information and the needed costs are posted." Or, the service center site provides "a list of the distribution data (music data)" that general users can read [0078] and follow steps to listen to the music with the advertising message included [0090]. Matsukawa's

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[2] *See* Attachment A hereto, pages A-1 and A-2.

service center website just has a list of accessible songs of famous performing artists. Matsukawa fails to disclose an Internet website relating to a new musical theater show. Matsukawa does not disclose content on the service center website having anything to do with a musical theater show.

Applicant's claim 5 recites a step of, "after posting the site, distributing a permanent non-paper announcement item for the site." Matsukawa [0013] teaches that his system of melding an advertising message to audio music replaces company promotional items such as calendars and towels. Applicant respectfully points out, the Examiner incorrectly characterizes the reference at page 8 of the Final Office Action, saying that "the Examiner stipulates that Matsukawa teaches a towel having the company information printed on said towel [0013], wherein said company provides access to a musical piece (show) over the Internet." That is not what Matsukawa teaches about a towel. Matsukawa teaches that a towel was a prior art promotional product. Matsukawa teaches that his non-physical, electronic system should be used instead of such company promotional items as towels. What Matsukawa actually states, for convenience of reference, is as follows:

> [0013] Accordingly, the company can attempt to improve its image by attaching the company information to so sophisticated a musical piece or the like that it sells ten thousands even though it is charged, which cannot be achieved by printing the company information to calendars, notebooks, fans, towels, etc.

Matsukawa cites the calendars and towels and such as the prior art to which he was comparing his invention; Matsukawa clearly teaches to abandon calendars and towels in favor of his non-physical system. Matsukawa [0013] teaches to refrain from using towels, calendars, etc. because it is cheaper to use Matsukawa's system of recorded-audio including the company audio message. The Examiner has incorrectly mixed something that Matsukawa was replacing and discrediting into Matsukawa's invention.

Moreover, Matsukawa has no teaching about any physical item displaying the site address. Matsukawa lacks any teaching of how visitors are directed to his service center site and seems to assume that the service center site (i.e., the music distribution site) already has members. A person of ordinary skill in the art would read Matsukawa as teaching that a downloadable song by a famous performer such

as U2 or Sting would get an extra 5-second audio clip promoting a company, and would think of the service center site on which the audio clip could be heard as something like Napster.

Also, Applicant's claim 5 recites "wherein the site includes a ticket purchasing feature for the new musical theater show." Matsukawa fails to disclose theatrical ticket sales. Although the Examiner recognizes this deficiency in Matsukawa, the Examiner gives the deficiency too little weight. The problem of how to promote theatrical ticket sales is substantial. Matsukawa does not address the special problems of promoting a new musical theater show or of ticket sales for it. For promoting a new musical theater show, as the present invention does, it is not an easy matter to establish, maintain and build interest over the development years, as the show gets written, performed in a reading or readings, and performed off-Broadway. The creators and producers of the show may want various people to be able to follow the progress of the show. A permanent announcement item (such as a beach towel) with the show's website address, given to someone has a better chance of being retained than a business card, post card, letter, etc. That permanent item will serve to remind its owner of the show, and with the website address easily in view, the item's owner may access the show's website if he wants to check on the show's progress. The permanent announcement item of the present invention is intended to activate the curiosity of its owner from time to time. Matsukawa fails to provide such a teaching or result.

Matsukawa is without any use or help for the problem of how to advertise a new musical theater work on a small budget, especially at the point in time where the show is not-yet-cast and especially in the usual situation for a new show of lacking a famous performer. Matsukawa is only about famous music performers and offers no teaching for promotion of unknown works or performers. By contrast, Applicant's presently claimed inventive promotion method does not depend on having a famous singer involved.

Matsukawa also assumes recorded digitized audio by a famous performer. By contrast, Applicant's presently claimed inventive promotion method is useable without requiring any audio recording. Applicant's present invention can be used to promote the new musical theater show before an audio recording has been made.

Thus, it should be appreciated that Applicant's presently claimed invention

substantially differs from Matsukawa. A person of ordinary skill in the art would not have been motivated based on Deitrickson to modify Matsukawa in the direction of Applicant's invention. Deitrickson teaches interactive marketing using CDs [0003], using a product that is multimedia combination of a music video and "today's equivalent of the old 45 rpm singles of the past." [0008] For Deitrickson's method to work, the consumer needs to receive a micro CD (or DVD or the like), which then (assuming the recipient chooses to use the CD) can be used to do such things as play music videos, reach the Internet to purchase concert tickets, etc. There are substantial recording and distribution costs associated with Deitrickson. Again, as has been pointed out for Matsukawa, such expenditures simply are not possible in the case of most new musical theater shows.

Moreover, Matsukawa and Deitrickson are not reasonably combinable as the Examiner proposes, because Matsukawa teaches that his non-physical system replaces old systems distributing calendars or towels, while Deitrickson expressly relies on physical distribution (of a micro CD or DVD).

Additionally, even with Matsukawa and Deitrickson, a person of ordinary skill in the art still falls quite short of Applicant's invention of claim 5. Neither reference teaches a website with content relating to a new musical theater show. Matsukawa only discloses a service center website for song titles performed by famous artists, apparently with an existing membership visitor base, and such a website is not what is recited in Applicant's claim 5. Moreover, both references are silent about theatrical ticket sales. Neither reference contains any useful teaching for a new musical theater show.

Turning to Applicant's claim 18, the presently claimed invention is a "promotional beach towel, wherein the beach towel includes an Internet domain name relating to a theater show, wherein the domain name is for an Internet website on which appears content relating to the theater show and the Internet website includes a ticket purchasing feature."

Matsukawa [0013] only generally discloses, as a conventional system that he is replacing, "printing the company information to calendars, notebooks, fans, towels." Matsukawa fails to teach or disclose that what is on those old towels is, specifically, an Internet domain name. From corporate logos to artwork, there are many other things that a company would be likely to put on a promotional towel

rather than a website address. It should be remembered that the towels and other things mentioned would probably given away to customers or sporting event fans or perhaps participants at a sponsored golf outing, and so there would be some corporation logo or name on the towel. It should be noted that the Examiner has not made of record any beach towel that expressly recites a website address.

In any event, Matsukawa contains no teaching of any connection between the towel that he mentions [0013] and any website that he mentions. Matsukawa teaches using the website instead of the towel, not with the towel.

In summary, the Examiner's proposed reading of Matsukawa and Deitrickson is artificial and not how a person of ordinary skill in the art objectively would have thought. It is only because of access to Applicant's present claims that the Examiner tries to draw such features out of Matsukawa and Dietrickson. A person of ordinary skill in the art, without such access to Applicant's claims, would not see such features in the references. Rather, he would read Matsukawa as a way for a company, upon paying a lot of sponsorship money to a famous recording artist, to tag a 5-second recorded message about the company to a song that many consumers will want to download and hear by virtue of the recording artist's fame. And the same person of ordinary skill in the art will read Deitrickson as a response to the situation that "[t]here is currently no way for consumers to watch ... music videos on demand unless they purchase a regular size DVD and/or videotape." [0005] He will read Deitrickson's explanation that his product "is a multimedia combination of a music video and today's equivalent of the old 45 rpm singles of the past." [0008] Such a person cannot help but recognize that both references are entirely reliant on an audio-recording. Clearly Matsukawa and Deitrickson are part of the recording industry.

However, the person of ordinary skill in the art as part of his background knowledge knows that much music and theater exists outside the recording industry, whether unrecorded bar bands, coffee shop performances, theater showcases, off-off-Broadway shows, festivals, etc. He simply would not be coming up with Applicant's presently claimed invention out of Matsukawa and Deitrickson, two recording-industry references. Upon reading the two recording industry references, he would not generally think in the direction of new musical theater (for at least reasons of budgetary impossibility). Moreover, if anything, even

when established theater is concerned, there have been reports that Broadway producers are phasing-out and moving away from undertaking original cast recordings, presumably for economic reasons. This makes a person of ordinary skill in the art even less likely to think in terms of a recording for a new musical theater show. A person of ordinary skill in the art, with just Matsukawa and Deistrickson, would not have the present invention naturally suggested to him by those two recording industry references.

Accordingly, reconsideration and withdrawal of the obviousness rejection of claims 5 and 18 based on Matsukawa combined with Deitrickson are respectfully requested.

At page 6 of the Final Office Action, Claims 8 and 16 have been rejected under 35 U.S.C. 103(a) as unpatentable over Matsukawa in view of Sheppard.

Applicant respectfully traverses this obviousness rejection.

Applicant's claim 8 recites a "method of promoting a theater show, comprising: for a to-be-promoted theater show, establishing an Internet site relating to the show; after posting the site, distributing a beach towel wherein the Internet site address is embroidered onto the towel." Applicant's claim 16 depends on claim 18 and recites that the website address is embroidered onto the towel.

Matsukawa teaches away from using any tangible item, of which a towel is one example of a conventional physical item to avoid. The combination of Matsukawa and Sheppard that the Examiner proposes is not reasonable, because Matsukawa teaches away from tangible promotional items, such as the very goods that Sheppard teaches. Thus, the references are not reasonably combinable.

Even if the two references are considered, still the presently claimed invention of claims 8 and 16 is not disclosed to a person of ordinary skill in the art. Both Matsukawa and Sheppard lack any teaching of promoting a new musical theater show. Both references lack disclosure of a promotional beach towel having embroidered thereon the Internet site address of an Internet site relating to the new musical theater show being promoted.

Matsukawa only mentions towels generally, as something, like calendars and notebooks, to be avoided. Neither Matsukawa nor Sheppard teaches to use a towel, and particularly, a beach towel, and more particularly, a beach towel with a specific website address embroidered thereon.

Applicant's inventive beach towel provides unexpectedly superior results for promoting a new musical theater show over anything disclosed in Matsukawa which the Examiner has cited as the closest art. It would be impossible to use the methods of Matsukawa before an audio recording had been made, and thus impossible to use Matsukawa's methods for promoting vocal music that had not yet been orchestrated and performed, which is the typical situation in the case of a new musical theater show during much of its development, until very near to its on-stage opening. And even once a new musical theater show is performed live on-stage, it is not necessarily desired to record the early performances, or, even if a recording is made, to widely distribute the audio recording from the early performances. Matsukawa requires use of the audio recording, which may be unavailable for a new theatrical show in development, or, even if available, not at a point where everyone concerned would be prepared to permit its dissemination. Such expenses of audio recording and dissemination would far outpace what, inevitably, in most new theater projects is a tiny budget. Matsukawa discloses his methods for use with famous, sponsored recording artists (which necessarily entails a big budget) and Matsukawa's methods simply cannot be accomplished by a new theatrical show that lacks a famous performer with attendant big budget and established distribution network.

By contrast, Applicant's inventive methods and beach towels can be used even before the music scores for a show has been written. For example, even before all the song scores for the Worlds Away Musical had been written (much less a first live show opened in New York), beach towels with the WorldsAwayMusical.com website address were distributed in that early time period. The beach towels with the WorldsAwayMusical.com website address embroidered were found to be even noticeably more durable, lasting through more seasons, than beach towels stamped with the website address. Donees of the WorldsAwayMusical.com embroidered beach towels reported still using their beach towels several years later, in 2004 (when the show opened in New York). Thus, the inventive method of Applicant's claim 8 using an embroidered beach towel and the inventive embroidered beach towel of Applicant's claim 16 provide unexpectedly superior results compared to Matsukawa, which the Examiner cites as the closest prior art.

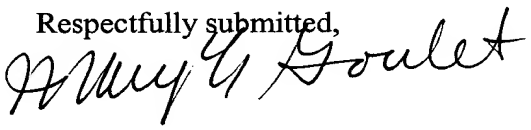
Accordingly, for the several reasons set forth above, reconsideration and withdrawal of the obviousness rejection of claims 8 and 16 based on Matsuakawa combined with Sheppard are respectfully requested.

In view of the foregoing, it is respectfully requested that the application be reconsidered, that claims 2, 5, 8-9, 16-18 and 23 be allowed, and that the application be passed to issue.

Should the Examiner find the application to be other than in condition for allowance, the Examiner is requested to contact the undersigned at the local telephone number listed below to discuss any other changes deemed necessary in a telephone or personal interview.

A provisional petition is hereby made for any extension of time necessary for the continued pendency during the life of this application. Please charge any fees for such provisional petition and any deficiencies in fees and credit any overpayment of fees to Attorney's Deposit Account No. 50-2041.

Respectfully submitted,



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